IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.692 OF 2006
IN
WRIT PETITION NO.253 OF 2006

M/s. United Ink & Varnish Co.Pvt.Ltd. .. Appellant
v/s.
Shri Chandrashekhar Kuvre and others .. Respondents

Mr. S.M. Naik for the appellant.

Mr.R.S. Upadhyay for the respondents.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 21ST NOVEMBER, 2006.

P.C.

After having heard the counsel for the parties, we are of the view that the appeal deserves to be allowed and the impugned judgment of the learned Single Judge has to be set aside. We indicate the reasons there for.

2. We shall refer the appellant and the respondents as `the employer' and `the complainant' respectively.

3. The complainant was in the employment with the employer as operator of Buhler machine. It is the case of the employer that on 13.9.2001 at about 2.20 p.m. the complainant

without inspecting the level of the ink in the ink feeder, operated the Buhler machine in spite of the siren alarm being switched off and as a result thereof, the roller burnt and a dark patch was found on the roller. Because of the misconduct on the part of the complainant, the employer claims to have suffered loss of about Rs.15,00,000/-. It is the case of the employer that the complainant admitted his guilt in writing on 13.9.2001. On that very day, the employer issued show cause notice-cum-suspension order to the complainant and by the order dated 19.9.2001, the complainant was dismissed from service. That led the complainant to approach the Labour Court by filing complaint under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act). Interalia, the grievance was raised that the services of the complainant were terminated without holding an enquiry. An application for interim relief was made under section 30(2) of the MRTU & PULP Act by the complainant. The application for interim relief was resisted by the employer. The employer set up the case that in view of the admission of guilt by the complainant, no enquiry was necessary and in the peculiar facts and circumstances of the case, it cannot be said that the dismissal order without enquiry was bad in law. In the alternative, the employer set up the case that in any case where dismissal is affected without holding an enquiry, it is open for the employer to justify the termination of the complainant's service by leading independent evidence before the court.

4. The Presiding Officer, 12th Labour Court, after hearing the parties, vide order dated 10th June, 2002, granted liberty to the

employer to hold the domestic enquiry and prove the alleged misconduct against the complainant by following the principles of natural justice but at the same time, the employer was required to pay 75% salary to the complainant from the date of termination i.e. from 19.9.2001.

5. Aggrieved by the order dated 10th June, 2002, the employer preferred revision application before the Industrial Court. The Industrial Court partly allowed the revision application by permitting the employer to prove the charges against the complainant before the court. However, the Industrial Court directed the employer to provide employment to the complainant within a period of one month from the date of the order and also deposit the wages payable to the complainant from the date of filing of the complaint until the date of employment within two months from the order.

6. The order of the Industrial Court dated 3.9.2005 was challenged by the employer in the writ petition. The learned Single Judge found no merit in the petition and dismissed the same.

7. The legal position is no more res integra that interalia where an order of dismissal of an employee on the ground of misconduct is passed without holding the domestic enquiry, it is open to the employer to prove the misconduct in the court. That being the legal right available with the employer, we hardly find any justification in the order of the Industrial Court directing the employer to reinstate the complainant and pay him wages during

the pendency of the complaint. That order, in our view, is not justified even in exercise of the power under section 30(2) of the MRTU & PULP Act. The order passed by the Industrial Court, if allowed to stand, would occasion in failure of justice in asmuch as despite the right having been given in law to the employer to prove the misconduct in the court in a case where the order of dismissal was not preceded with by the domestic enquiry, such legal right would be seriously prejudiced. On the other hand, if ultimately, the employer fails to establish the misconduct and the complaint is allowed; the order of dismissal is set aside, obviously, an appropriate consequential order shall be passed by the court.

8. We find no justification in the interim order being passed in favour of the complainant during the pendency of the complaint. The interim order granted by the courts below is set aside. The application for interim relief under section 30(2) of the MRTU & PULP Act, 1971 stands dismissed.

9. However, looking to the short controversy involved, we direct the Labour Court to hear and decide the complaint expeditiously and preferably before 30th April, 2007. Both the counsel assured us that the parties would fully cooperate to the Labour Court in disposal of the complaint before the date fixed by us.

No costs.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)